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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION

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DOCKET SECTION

*OST-95-206-12*

U.S.-TORONTO EXEMPTION  
PROCEEDING

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Docket 50168

**ANSWER OF  
NORTHWEST AIRLINES, INC.  
TO TRANS WORLD AIRLINES'  
MOTION TO COMPEL**

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March 27, 1995

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Northwest opposes TWA's March 16 motion to compel insofar as that motion would require Northwest to revise its traffic and financial forecasts to reflect "self-diversion." Northwest fully complied with the Department's Evidence Request in this proceeding, and TWA has not shown good grounds to delay and further complicate this proceeding by requiring Northwest to submit additional data.<sup>1/</sup>

**A. Northwest Has Fully Complied with the Evidence Request  
of Instituting Order 95-2-57.**

The Department's Instituting Order did not call for "self-diversion" data of the type that TWA claims. The Evidence Request included only the standard instruction that the applicant "include any anticipated traffic changes in other markets on the applicant's existing system in which service will be altered as a result of the

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<sup>1/</sup> TWA's motion also asked the Department to shorten the answer period, but no such action was taken. Accordingly, this answer is timely under Rules 16 and 18(c) of the Department's Rules of Practice.

proposal in this case." Order 95-2-57, App. A at 3. Northwest's response fully complied with that instruction, because its proposal will result in no altering of any other Northwest service. The Evidence Request called for changes in traffic that might result from altered services, not speculation about what changes in traffic might occur notwithstanding no change in service.<sup>2/</sup>

TWA's motion also stresses that the Evidence Request calls for "[t]he net revenue anticipated from the proposed service for the forecast year." Order 95-2-57, App. A at 3 (emphasis added). However, the term "net" means simply that costs must be deducted from gross and that dilution factors must be taken into account. Indeed, the instruction immediately following the sentence quoted by TWA explains:

"This estimate is to be based on: (1) the traffic forecast in paragraph (c) above; and (2) the fares proposed in paragraph (d) above. Explain the derivation of all dilution factors used in each revenue estimate."

As just observed, "the traffic forecast" to be used in computing net revenues does not call for self-diversion data beyond what might be caused by altered services. Thus, to include any other traffic data in computing "net revenues" would be contrary to the express terms of the Department's instructions.<sup>3/</sup>

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<sup>2/</sup> In its traffic forecast in the parallel Vancouver proceeding, Northwest did identify a proposed change in its existing Spokane-Vancouver service, and that change was reflected in its traffic and financial forecasts. See Docket 50169 NW-300 at 1, & NW-400 at 1. For Toronto, however, there is no planned alteration in service.

<sup>3/</sup> Of course, the reference to "dilution factors" in the final sentence does not refer to self-diversion of traffic but to reduced revenues from those passengers to be carried on the proposed service that are the result of joint fares, fare prorates, promotions, and the like.

We agree with TWA that Delta's forecast appears not to have complied with Order 95-2-57, because that carrier is reducing its Pittsburgh-Toronto services in conjunction with its Atlanta-Toronto proposal, and yet that change is not reflected in Delta's traffic and financial forecasts. Northwest, however, is not in default.

**B. Evidence of "Self-Diversion" Should Not Be Required in This Proceeding.**

As just shown, Northwest has fully complied with the Department's Evidence Request. If, however, TWA's motion were construed to be a request to modify the Evidence Request to include a new requirement for "self-diversion" data, that motion is likewise without merit.

Self-diversion as such is not an issue in this proceeding. In an earlier regulatory era, the Department (and, before it, the Civil Aeronautics Board) made direct efforts to regulate carrier profitability and sought to ensure that proposed new services provided sufficient -- but not excess -- profits to the applicant. Thus, evidence of self-diversion was necessary to test impact of the proposed new service on the applicant's overall profitability. Such inquiries have no place in the current deregulated environment. The Department's only relevant interest in the potential profitability of a new route is to obtain some assurance that, for a limited-designation market, the applicant will have sufficient incentives to start-up and maintain the service. Otherwise, the impact of a proposed service on an applicant's overall profitability is not relevant, particularly the issue of profitability during an initial start-up period. See, e.g., U.S.-U.S.S.R. North Atlantic Combination Service Case, Order 91-6-2 at 17 (1991). Here, there can be no doubt as to Northwest's commitment to initiate

Minneapolis/St. Paul-Toronto service. And, within two years of the initial start-up period, U.S.-Canada services will be wholly deregulated and any issue about the profitability of any given route will have no regulatory significance.

On the other hand, the Department does have a strong and legitimate interest in "the effects of the applicants' service proposals on the overall market structure and the level of competition" and "which carriers will be most likely to offer and maintain service that provides the maximum benefits to the traveling and shipping public." Order 95-2-57 at 4-5 (emphasis added). But these criteria call for analysis of overall market structure and public benefits, not analysis of the intra-carrier impact of a new service. While it is therefore relevant for the Department to consider how a proposed service interrelates to all other services offered in the U.S.-Toronto market, the issue of self-diversion is not relevant. Moreover, for the 1995-1996 forecast year, the U.S.-Canada market will be undergoing dramatic and dynamic changes, with more than a score of new services initiated by multiple carriers. To focus on only one small piece of those dynamics -- that of self-diversion -- would be misleading and a waste of resources.<sup>4/</sup>

There are also the considerations of delay and unnecessary complexity of these proceedings. Given the flood of new U.S.-Canadian services during the forecast

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<sup>4/</sup> This is not to say that the Department should not draw logical and common-sense conclusions about the impact of diversion or, indeed, of self-diversion on alleged public benefits for a particular service proposal. It is apparent, for example, that the Toronto proposals of USAir and Delta amount to little more than shuffling passengers from one flight to another. But, for the Department to go beyond the data requests already made would not yield significantly more credible data bearing on this issue.

year, the Department cannot simply ask for "self-diversion" data; rather, the Department would have to instruct the carriers on what assumptions should and should not be made in developing such data. Otherwise, the resulting responses would be so divergent as to be mush. Once receiving such instructions, Northwest estimates that it would require two weeks to prepare adequate revisions to its traffic and financial forecasts. Rebuttal exhibits would become correspondingly more complex, and the Department might even need an evidentiary hearing to sort out disputes the applicants' forecasts and data. Given the low decisional importance of such data, the added delay and complexity would not be justified.

### **Conclusion**

Northwest has fully complied with the Department's Evidence Request, and TWA has shown no good grounds to require additional data on behalf of Northwest. A contrary result is justified only if the Department is prepared to give strong decisional weight to evidence that bears on self-diversion. We are prepared to provide additional data if the Department requests, but that step -- with the attendant

expense and delay -- should not be ordered unless self-diversion data is to be of decisional importance.

Respectfully submitted,



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March 27, 1995

## CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of March, 1995, I have caused to be served a copy of the foregoing Answer of Northwest Airlines, Inc. to Trans World Airlines' Motion To Compel on the following individuals by first class mail, postage prepaid.

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